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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MARIA CORDRAY et al., Plaintiff and Respondent, v. BRENT WEI-TEH LEE, Defendant and Appellant.	H036826 (Santa Clara County Super. Ct. No. CP010972)

Appellant Brent Wei-Teh Lee (Father) and respondent Maria Cordray (Mother) were romantically involved starting sometime before 1993, though they never married. They are the parents of two children, a boy, Branden, born in 1993, and a girl, Bria, born in 1995. The parties separated in 2002, with the children residing primarily with Mother but still spending significant time with Father. A 2002 court order set guideline child support at $4,632 for the two children payable monthly by Father to Mother based on Father's 33 percent custody timeshare and his monthly self-employment income of $33,333, with no income on Mother's side. The court also made a specific finding that Father's 1999 net worth was $10,000,000. In 2003, the parties stipulated to reduce child support to $3,300 per month. In 2008, Father once again sought to reduce his monthly child support payment, but the court denied his motion in early 2009,

finding that it lacked sufficient information or evidence to warrant the requested reduction.

Less than a year later, in late 2009, Father once again sought to reduce child support on the bases that he was then retired at age 63 and receiving Social Security; had a substantial decline in income due to financial losses in 2008; and was uninsured and had been diagnosed with cancer, incurring substantial amounts of medical expenses for ongoing treatment. The matter was continued multiple times while the parties engaged in discovery and the court concluded a contempt proceeding filed by Mother against Father for payment of child support arrearages, which was finally resolved by Father paying amounts owed.

The 2009 child-support-modification request, Father's third such request, was finally heard in August, October, and November 2010. After roughly a combined day and a half of testimony, including that of experts, the court denied Father's request to reduce child support, as well as Mother's request for an increase, and ordered child support to continue at $3,300 per month. The court reached the conclusion that this amount was appropriate per the guidelines after imputing some monthly income to Father based on certain of his substantial assets. The court also concluded that this amount was appropriate based on an alternative finding that special circumstances existed to warrant deviation from the guidelines under Family Code section 4057, subdivision (b)(5), given Father's wealth, recent inheritance of income-producing property in Taiwan, recent cash purchases of multiple properties that were not yet income-producing, and his recent significant cash gifts to his older children and to charity.[1] The court further ordered Father to pay Mother $45,000 in attorney fees and costs premised on Mother's need and Father's ability to pay, concluding that Mother's fees incurred comprised more

[1] Further unspecified statutory references are to the Family Code.

than one-half of her "entire net worth, but less than one-half of one percent (0.5%) of father's net worth" based on his own schedule of assets. The court additionally found the award of attorney fees and costs appropriate as a sanction under section 271 in that considerable litigation time was spent due to requests made by Father; information provided by him was inaccurate and incomplete, necessitating further consumption of time and expense; Father had rejected established statutory and case law on certain points; he had maintained unmeritorious positions; and he had made two unsuccessful requests to reduce child support in a two-year period.

Father appeals from the court's order on his third child-support-modification request from 2009 that was heard in 2010. He raises numerous issues, all without sufficient legal analysis or regard for the actual record and the applicable standard of review—abuse of discretion. Mother did not file a brief, informing this court by letter of her inability to afford legal counsel on appeal.

The record amply supports the court's findings and conclusions on all matters considered and decided; therefore, we find no abuse of discretion by the trial court and will affirm the order.

STATEMENT OF THE CASE

I. *Factual and Procedural Background*

The parties became romantically involved before 1993 and had a son that year. Mother, significantly younger than Father, did not then work but eventually pursued a nursing degree. The parties lived together in Father's home. They had a second child, a daughter, in 1995. For some period of time while they lived together, Mother received funds from Father about twice per month. The parties separated in 2002, with Mother moving out of the house along with the children.

Mother filed a petition in June 2002 to establish paternity and to set child support and visitation. By order filed August 20, 2002, the court set monthly guideline child support at $4,632, allocated equally between the two children. The

court found that Father's income was from self-employment, that his 1999 net worth was $10,000,000, and that his monthly income was $33,333. The court set custody timeshare at 67 percent with Mother and the balance with Father. Father was further ordered to provide an accounting setting forth the ownership of particular properties, his interest in each, and the value of each.

Father sought to reduce child support by motion filed in March 2003. The parties stipulated to an order reducing child support to $3,300 per month—$1,320 for Branden and $1,980 for Bria. The order found that under a prior agreement, Father "was to provide documentation to support this reduction" but that he had not done so and was to comply within a month "or the prior order of child support shall be reinstated." Father filed a four page "Accounting of [his] Ownership Interest in Assets" in July 2003, which Mother has contended all along did not comply with the court's order but which she did not challenge by seeking to reinstate the increased level of child support that had been previously set.

Father filed a second motion to reduce child support in February 2008, based on an asserted change in circumstances, including financial losses in the stock market. After multiple continuances and exchanges of financial documentation though discovery and discovery motions, the matter was finally heard on the long-cause calendar on January 16, 2009. The court denied Father's second motion to modify child support, concluding that there was insufficient evidence to support it; Father did not comply with reasonable discovery requests; he had substantial wealth with income-producing assets; he had the ability to pay support; Mother was gainfully employed and working substantially full time; and the children needed the existing level of support. The court further ordered Father to pay $16,969.75 towards Mother's attorney fees.

Father filed his third motion to reduce child support eight months later, in November 2009—the subject of this appeal. This time, the request was based

again on a decline in his income and losses in the stock market and, additionally, Father's perception that the order requiring him to pay $3,300 in monthly child support was not "fair." The motion was supported by Father's declaration, in which he stated that he was then retired but had his own investment business; he had sustained about $250,000 in losses to his stock portfolio; and falling interest rates had resulted in a loss of interest income, such that his income had become negative. Father was also then 63 years old and receiving $1,062 in monthly Social Security benefits. His accompanying Income and Expense Declaration, which was signed under penalty of perjury, stated that he received $10,000 per month in interest or dividends and made monthly charitable contributions in this same amount, among other expenses, but did not acknowledge income from Social Security. He claimed that the children spent 46 percent of their time with him and 54 percent with Mother.

Father filed another declaration a month later in further support of his motion. The declaration sought a complete waiver of all child support and stated that he had been diagnosed with cancer the preceding month, did not have health insurance, had already spent some $32,000 in medical expenses, and would continue to incur significant medical expenses throughout the course of his treatment. Attached to his declaration were copies of some medical reports and bills. Father also filed schedules showing loss of income from several properties and other financial summaries of his assets and their values, along with two DissoMaster calculations reflecting guideline support for 2008 and 2009, erroneously for one child only, at $375 and $232, respectively. These support figures were generated by Michael S. Thompson, CPA, whom Father had engaged as an expert for purposes of the motion. Mr. Thompson later offered his opinion in testimony that guideline child support, according to his calculations based on

information provided by Father, would be $264 payable monthly by Father to Mother.

Santa Clara County Department of Child Support Services opposed the motion, as did Mother. Mother's responsive Income and Expense Declaration, which was also signed under penalty of perjury, showed that she had obtained her nursing degree, was working as a nurse 33 hours per week plus available overtime, and making approximately $8,000 per month. Mother had liquid assets of $12,000 plus other assets worth $11,700. She paid $2,200 in monthly rent and she provided health insurance for the children through her job. She claimed that Branden spent 73 percent of the time with her and 26 percent with Father, while Bria spent 84 percent of time with her and 16 percent with Father.

Mother also pointed out that some of Father's assets were owned in the name of third party entities, which were 100 percent owned by Father, and that these entities paid expenses relating to some of his assets, such as real property taxes for the 6,000 square foot home on 12 acres in Saratoga where Father resided. Mother further disputed some of Father's claimed expenses, such as $2,000 per month he claimed in educational expenses for the children, who attended public school, and $3,500 per month for "child care." And she contended that because of Father's wealth, recent acquisition of multiple investment properties with cash, inheritance of income-generating property in Taiwan, and cash gifts to other of his children and large charitable donations, income should be imputed to him for purposes of guideline child support. She alternatively contended that special circumstances existed to upwardly deviate from guideline support under section 4057, subdivision (b)(5). Mother also sought an award of attorney fees, as Father ultimately did as well.

Father's motion was continued several times while the parties engaged in discovery battles. In addition, the court was required to address a contempt

proceeding initiated against Father concerning child support arrearages. That proceeding was ultimately resolved by Father paying amounts owed and the court considering the contempt citation "purged."

The matter was finally heard on August 13, 2010; October 8, 2010; and November 18, 2010, for a total period of about a day and a half. Father and Mother both testified, Mother on direct by offer of proof without objection, and both sides offered an expert witness to support their respective positions concerning Father's payment of child support and the appropriate amount based on his financial position and other circumstances. Mother requested a statement of decision before the end of the proceedings, and the court took the matter under submission.

The court issued what it called a "Statement of Decision/Order re Child Support Modification" on February 18, 2011, which concluded by reflecting the court's denial of Father's motion to reduce child support and Mother's responsive request to increase it, and an award of attorney fees to Mother of $45,000 based on need under section 3652 and as a sanction under section 271.

Father filed an objection to the Statement of Decision, pointing out what he contended were omissions and ambiguities in it, including that it did not determine if there had been a change in Father's circumstances and did not determine guideline support. Mother filed a response to Father's Objection, noting what she considered to be factual errors in it, along with a proposed statement of decision.

II. *The Court's Combined Statement of Decision and Final Order*

On June 27, 2011, the court filed its "Final Statement of Decision/Order re Child Support Modification." After discussing the relevant background at length, the court determined that the evidence had shown the following facts:

1) Father was undergoing treatment for cancer and was uninsured. He had paid around $32,000 for initial treatment, and $61,000 for later treatment. He claimed ongoing medical expenses of $7,000 per month.
2) Father receives $1,062 in monthly Social Security retirement benefits, with each child receiving an additional monthly auxiliary benefit of $592, which is deposited into bank accounts in the children's names but which Father essentially controls.
3) Father lives in an approximately 6,000 square foot home in Saratoga situated on 12 acres. There is no mortgage payment due on this home, and property taxes and insurance are paid by a third party entity, 100 percent owned by Father. Father estimated the home, which has five bedrooms, six and a half bathrooms, and a three-car garage, to be worth $1.5 million. Father owns two cars, one for which he paid $50,000 in cash.
4) Father is the 100 percent owner of another third party entity, which owns a 30-acre parcel located next to his residence. There are 600 grape vines on the property, and in 2009, he paid about $10,000 to produce three barrels of wine. He intends to sell this property after building a road on it.
5) Father inherited real property in Taiwan subject to a lease. By agreement, his sisters had received monthly rent from the property of $10,000 for about 30 months, but Father now owns the property outright and is entitled to receive all rents. There was an ongoing dispute with tenants of the property, and Father testified that he could not accept rents until the dispute was resolved. Father did not provide an estimate of value for this property.

6) Father purchased real property in San Jose with horse stables for $1,500,000 in 1997. The property is unencumbered and it produces a monthly income.
7) In February 2009, Father purchased six residential properties in Stockton for which he paid $1,059,000 in cash. He rents the houses mostly to college students.
8) In July 2009, Father purchased 37 vacant lots in the Stockton area, which he intends to develop. He paid approximately $394,000 in cash.
9) Father owns an undeveloped parcel in Morgan Hill.
10) Father owns an interest in commercial property in Houston, Texas. He testified that the value is less than what he paid for it and that the property was then in default and subject to foreclosure. He also has an interest in commercial property in Las Vegas, Nevada, which generates income that he has assigned to an adult daughter.
11) Father recently invented a filtration system to clean water and to convert seawater to drinking water. He built a prototype and is applying for a patent. He had not yet had the time to approach industry with his invention. He was also working on another invention for the conversion of wastewater.
12) In January 2009, Father made a $125,000 cash donation to his high school.
13) In April 2010, Father made a cash gift to the University he attended in Taiwan of $989,457 toward the construction of a building, the design of which he would be personally involved in. He converted two annuities to cash and closed those accounts in order to make the donation. He testified that he intended to donate another $4,000,000 toward the project, had already made three trips there, and would spend more time

after the groundbreaking. He spent a fair amount of his time on his inventions and projects.

14) Father gave his adult son $300,000 in cash for a wedding gift and $100,000 to two grandchildren in early 2010. At the time, he did not know whether his cancer could be successfully treated and he wanted to provide for his family.

15) Father's Income and Expense declaration filed in August 2010 showed his Social Security income of $1,062 per month, dividend/interest income of $650 per month, rental property income of $1,500 per month, and "other" of $16,000 per month. Father has a PhD, but there was no description of his vocation, other than a description in tax returns as "venture capitalist." Father claimed bank accounts worth only $5,000, and claimed no stocks, bonds, or assets he could sell. He claimed all other real property valued at "$4m." His average monthly expenses were declared to be $23,075, including an average monthly charitable contribution of $10,000, and no debt. His accountant estimated his assets at $6.8 million based on Father's own handwritten summary.

16) Mother works an average of 33 hours per week as a registered nurse, standard for her particular job. She earns $53.16 per hour. She rents her home, has $20,000 in bank accounts, and a 401b account of $39,000. Her household expenses average $5,700 per month.

17) Custody timeshare was disputed. Father claimed his custody time to be around 40 percent. Mother offered her calendars documenting Father's timeshare at 34.8 percent for Branden and 13.9 percent for Bria.

The court then made extensive and detailed findings of fact and conclusions of law in a 23-page order, which we summarize as follows:

1) Father is an inventive scientist and an astute businessperson. He is optimistic about his recovery from cancer. The shock of his cancer prompted him to remember his family with generous gifts and inspired him to give generously to his alma maters.
2) Father took advantage of the downturn in the economy to invest in real property and businesses that may yield a profit in the future. Even with claimed significant financial losses in 2008, Father still invested over $1,400,000 in cash in negative-cash-flow properties in 2009. Voluntarily taking on such properties does not mean that Father has no income to pay child support. Where the supporting party has chosen to invest in non-income producing assets, the trial court has discretion to impute income to those assets based on a reasonable rate of return. (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1239 (*Williams*); *In re Marriage of Kirk* (1990) 217 Cal.App.3d 597.)
3) In spite of Father's looming medical costs, he gave family members cash gifts totaling $400,000 while his motion to reduce child support was pending. These funds "would likely exceed the amount of child support, at the current obligation level, for Branden and Bria through emancipation of each child." He also made the charitable donation of nearly $1 million to a university he attended in Taiwan in April 2010.
4) It is clear that Father loves his children and will provide for them. But it is also clear that the current level of child support "grates on" Father because he thinks that Mother lives an extravagant lifestyle, a belief that is unsupported by the evidence. Father's contribution to the support of the children while in Mother's household is "necessary and appropriate because he is wealthy and has the ability to pay" while she needs the financial help to meet the children's needs when they are in her care.

Child support may appropriately improve the standard of living of the custodial household to improve the lives of the children. (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1360 (*De Guigne*); *In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747 (*Schlafly*).)

5) Child support may be based on the guideline, and in setting it, the court may include imputed investment income. Alternatively, the court may make a finding of special circumstances under section 4057, subdivision (b), and award child support that departs from and exceeds the guideline.
6) Child support was reduced by stipulated order in June 2003, provided Father complied with the accounting requirement set forth in the August 20, 2002 order. "Although Father filed a purported accounting on July 7, 2003, it did not comply with the terms of the prior order."
7) "Father still has an earning capacity based on: (a) actual investment income (taxable and non-taxable); (b) Social Security income; (c) imputed investment income; and (d) income resulting from his inheritance of property in Taiwan."
8) "Any changes in Father's financial circumstances are largely due to his volitional acts; and Father is still a man of wealth. Since the hearing [resulting in denial of Father's most recent prior effort to reduce child support] on January 16, 2009, the evidence shows that: (a) Father purchased six rental properties in Stockton for $1,059,000 in cash in February[] 2009, knowing there would be a negative cash flow; (b) Father purchased thirty-seven building lots in Stockton for $394,000 cash in July[] 2009, for possible development; (c) Father made a cash gift to his adult son . . . in or about February[] 2010, (after filing the

instant motion) of $300,000; (d) Father made a cash gift to a university in Taiwan of $989,457 on or about April 1, 2010. [¶] In addition, Father testified at the January 16, 2009 [hearing] that he had recently made a cash gift of $125,000 to his hometown in Taiwan." He also testified that he intended to donate another $4,000,000.

9) Mother testified that Father's actual custody timeshare for the nine months before the hearing was 34.8 percent for Branden and 13.9 percent for Bria, and even less immediately before that. Mother's calendars documenting this were admitted into evidence. Although Father disputed Mother's timeshare assertions, he only referred to one alleged discrepancy in Mother's calendars. Mother is more credible than Father on the issue and "it is likely that an average timeshare percentage for the two children may be around 24.35% although it will remain fluid because of the age of the children."

10) Mother's expert testified that Father could reasonably expect to earn $28,593 per month on a balanced investment portfolio, consisting of investible assets of $4,936,873, a figure based on Father's own statement of assets as provided to his expert. Although Mother's expert is more credible than Father's for a variety of reasons that include expertise and experience, factual errors in Father's expert's reports, and the omission of some of Father's assets, the use of a rate of return of approximately 3 percent is more reasonable than the use of 6.95 percent to which Mother's expert testified. Father's asset omissions included that he had at least $1,380,850 in bank accounts, not $696,023.64 as he represented. In addition to undervaluing Father's cash assets by some $700,000, his expert also improperly based real estate values on assessed values. It is appropriate to include imputed investment income

on the amount of cash that Father recently invested in "negative-cash flow and non-income producing real estate" and the $1,389,457 in cash he gave away within five months from his last request to reduce child support.

11) Father and his three sisters inherited real property in Taiwan that produced $10,000 in income, which by agreement went exclusively to the sisters for 30 months, after which the property and income would revert entirely to Father. Although Father testified that because of a rental dispute with the tenants he was not currently accepting rent, it is appropriate to impute $2,500 per month in rental income to Father, which is one-fourth of the total monthly income.

12) Mother works 33 hours per week as a nurse, which is considered to be standard and full time, and she works additional time when called. Her gross monthly income is $7,325. She also receives $35 per month in interest income but spends $54 per month for health insurance premiums for herself and the children.

13) Father sought the child-support reduction based in part on his cancer diagnosis and medical bills. But he provided inadequate documentation of these expenses. He may be entitled to substantial tax deductions for these expenses but he only claimed $1,450 per month in deductions in his Income and Expense Declaration. He also claimed $7,000 per month in ongoing medical expenses and Mother's expert factored this figure into his support calculations.

14) Father also sought the child-support reduction based on lost asset values, as he did in his prior unsuccessful request. Moreover, Father's asset valuation omitted some of his liquid assets and Mother's expert did not factor in any investment income to Father with respect to his

residence, certain commercial building investments, or his inheritance of property in Taiwan.

15) Father is not "employable," but he is an entrepreneur and his tax returns identify him as a venture capitalist. He testified in January 2009 that he is an " 'individual who engages in a pattern of entrepreneurial ventures,' that he has had success over time," and that he seeks out ways to have successful ventures that produce income in the long run. He manages his own properties without compensation and spends significant time on a patent invention and prototype and will donate time and effort to the building design for the university he attended in Taiwan. Mother is younger and more employable, but is reasonably employed.

16) The children receive $596 per month in Social Security benefits, which is deposited into bank accounts Father set up in the children's names. The bank statements arrive in the mail at Father's house and he reviews them personally with the children, who have credit or debit card access to the accounts. Despite Father's assertion that Mother somehow took money from the children's bank accounts, Mother is unaware of how these accounts are used by the children, she has never seen the account statements, and understands that the children use these accounts to purchase items they consume while with Father. Mother is more credible on the issue.

17) For purposes of determining guideline support, Father's custody timeshare is 24.35 percent and his monthly taxable income consists of $1,500 from rental income as his expert testified, $2,500 (one quarter of $10,000) imputed from the rental income derived from the inherited property in Taiwan, and imputed investment income of $11,317. While Mother's expert testified that a reasonable rate of return of 6.95 percent

on investments of $4,936,873 was reasonable ($28,593 per month), an imputed rate of return of 2.75 percent yields monthly income of $11,317.[2] Based on this rate of return, guideline child support is $3,312 per month. Based on a three percent rate of return, guideline child support would be $3,427.

18) Alternatively, special circumstances exist to warrant deviation from guideline support under section 4057, subdivision (b)(5), based on *Marriage of Cheriton* (2001) 92 Cal.App.4th 269 (*Cheriton*); *De Guigne, supra*, 97 Cal.App.4th 1353; *Schlafly, supra,* 149 Cal.App.4th 747; and *Williams, supra,* 150 Cal.App.4th 1221.

19) Mother is the parent most involved with the children's school and school activities. She schedules and pays for their athletic and extracurricular participation and she schedules their medical and dental appointments. Father does not know the names of the children's pediatrician or dentist and was unaware that Branden was being treated by a dermatologist. Father does pay for academic tutoring.

20) Father's own handwritten list of assets indicates a net worth of at least $6,488,000 while Mother owns no home and has a net worth many times less than Father.

21) With respect to attorney fees and costs, Mother has the need for an award of fees and Father has the far superior ability to pay it. Mother's request for an award of $45,000 in attorney fees and costs is warranted

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[2] The court's order referenced both 2.7 and 2.75 percent as the reasonable rate of return applied to derive Father's imputed monthly income for purposes of guideline support. But the dollar figure actually used by the court was $11,317. This figure is closer to 2.75 than 2.7 as the rate of return but is $3.00 more than our calculations yield. We consider a $3.00 mathematical error to be de minimis in this context. We will accordingly proceed on the basis that the court actually used a 2.75 percent rate of return to calculate Father's imputed income.

for the reasons set forth in her counsel's filed declarations. In determining whether to award fees and costs, the court must consider how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances. (*Marriage of Terry* (2000) 80 Cal.App.4th 921.) Mother's fees and costs are more than half her entire net worth, "but less than one-half of one percent (0.5%) of Father's net worth based on" his own handwritten schedule of assets.

22) Father provided inaccurate and incomplete information even to his own expert, which necessitated additional litigation time and expense. Father also took unmeritorious legal positions, including that his family-gifting activity should have no effect on his obligation to pay support, contrary to *Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1392 (*Destein*). Father's refusal to acknowledge statutory and case law resulted in a protracted hearing and required Mother to incur additional fees and costs. Father also made factual assertions that were unsupported. Mother does not have the income or assets to afford the level of litigation required to contest Father's motion, the second filed by Father within two years. Mother is therefore entitled to fees under sections 3652 and 271, and this will not impose an unreasonable burden on Father.

Based on all of the above findings of fact and conclusions of law, the court denied Father's request to reduce child support and Mother's request to increase it; ordered child support to remain at $3,300 per month payable by Father to Mother; allocated $1,320 for Branden and $1,980 for Bria; ordered unreimbursed health care expenses for the children to be split between the parties; and ordered Father to pay $45,000 towards Mother's attorney fees. The written order attached "XSpouse" calculations supporting the court's guideline child support

determinations, using a custody timeshare of 24.35 percent for Father and rates of return on investment of 2.75 ($11,317) and 3.00 percent ($12,342)[3].

Father timely appealed from the court's final order.

DISCUSSION

I. The Court's Order Concerning Child Support

A. Issues on Appeal and Standard of Review

Father challenges the court's denial of his request to modify child support and the related order maintaining monthly support at $3,300 per month for both minor children. We review a child-support order for abuse of discretion. (*Cheriton, supra,* 92 Cal.App.4th at p. 282.) This standard of review applies to both the court's imputation of income (§ 4048, subd. (b)(3); *Destein, supra,* 91 Cal.App.4th at p. 1393) and its alternative finding of special circumstances under section 4057, subdivision (b)(5). (*De Guigne, supra,* 97 Cal.App.4th at p. 1361; *In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1049 (*Cryer*) ["special circumstances" exception of section 4057, subd. (b)(5) gives trial court " 'considerable discretion to approach unique cases on an ad hoc basis' " and court has broad discretion to determine when such special circumstances exist].) In seeking to modify a child support order, a party must demonstrate a change in circumstances justifying the proposed modification. (*In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015; *In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1304 (*Bardzik*).) On appeal, we review the court's decision

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[3] XSpouse is a privately developed computer program that calculates guideline support under the formula required by section 4055. (*In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 378, fn. 3 (*Bodo*); *In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 523-524, fn. 2 [DissoMaster].) Using this program, the court calculated Father's monthly income by adding $1,062 from Social Security, $1,500 from rental income (per father's own expert), $2,500 from "imputed (or actual rental income from the inherited property (1/4 of $10,000 per month)[)], and imputed investment income of at least $11,317 per month."

against the same standard of review—abuse of discretion. (*Bardzik, supra*, at p. 1304; *Cryer, supra*, 198 Cal.App.4th at p. 1054; *Schlafly, supra,* 149 Cal.App.4th at p. 753.)

To assess whether the trial court abused its discretion, "[w]e determine 'whether the court's factual findings are supported by substantial evidence and whether the court acted reasonably in exercising its discretion.' [Citation.] We do not substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order. [Citation.]" (*Schlafly, supra*, 149 Cal.App.4th at p. 753.) In determining whether the court's finding are supported by substantial evidence, we examine the evidence in the light most favorable to the prevailing party and give that party, and the lower court's order, the benefit of every reasonable inference. (*In re Marriage of Catalano* (1988) 204 Cal.App.3d 543, 548; *Cryer, supra*, 198 Cal.App.4th at p. 1054.) We accept all evidence supporting the order as true and discard contrary evidence. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.) The order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found. (*Williams, supra,* 150 Cal.App.4th at pp. 1233-1234.)

Still, " 'the trial court has "a duty to exercise an informed and considered discretion with respect to the [parent's] support obligation . . . ." [Citation.] Furthermore, "in reviewing child support orders we must also recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by the statute or rule. [Citations.]" [Citation.] In short, the trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding . . . child support. [Citations.]" [Citation.]' ([*Cheriton, supra*, 92 Cal.App.4th at pp.] 282-283.)" (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 640 (*Sorge*).)

B. General Legal Principles of Child Support in California

" 'California has a strong public policy in favor of adequate child support. [Citations.] That policy is expressed in statutes embodying the statewide uniform child support guideline. (See . . . §§ 4050-4076.) "The guideline seeks to place the interests of children as the state's top priority." (§ 4053, subd. (e).) In setting guideline support, the courts are required to adhere to certain principles, including these: "A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life." (§ 4053, subd. (a).) "Each parent should pay for the support of the children according to his or her ability." (§ 4053, subd. (d).) "Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children." (§ 4053, subd. (f).)' (*Cheriton, supra,* 92 Cal.App.4th at p. 283, fn. omitted.)" (*Sorge, supra,* 202 Cal.App.4th at p. 640.)

" 'To implement these policies, courts are required to calculate child support under the statutory guidelines. (See §§ 4052-4055.) "[A]dherence to the guidelines is mandatory, and the trial court may not depart from them except in the special circumstances enumerated in the statutes. (§§ 4052, 4053, subd. (k); [citation]." [Citation.] The guideline amount of child support, which is calculated by applying a mathematical formula to the parents' incomes, is presumptively correct. [Citations].' ([*Williams, supra,* 150 Cal.App.4th at p. 1237].)"[4] (*Sorge, supra*, 202 Cal.App.4th at pp. 640-641, italics omitted.)

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[4] "The amount of child support normally payable is calculated based on a complicated algebraic formula found at" section 4055. (*Cryer, supra,* 198 Cal.App.4th at p. 1047.) "Although this formula is referred to as the statewide uniform 'guideline' (§ 4055), 'guideline' is a misleading term. [Citation.]" (*Cryer, supra*, at p. 1047.) " 'Determining child support under the guidelines has been criticized as a "complex and unduly costly" process "which requires the use of a computer and which is not understood by anyone, least of all the affected

In addition to section 4053, subdivision (k), the presumption that the mathematical formula yields the correct amount of child support appears in section 4057, which provides in pertinent part: " '(a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered. [¶] (b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056 . . . .' " (*Sorge, supra,* 202 Cal.App.4th at pp. 640-641, italics omitted.) The listed factors are considered circumstances that warrant deviation from the guideline and they include: the parties' stipulation to a different amount; the supporting parent having an extraordinarily high income such that the resulting formula amount exceeds the needs of the children; and a party not contributing to the needs of the children at a level commensurate with that party's custodial time. The list also includes a catch-all factor: "Application of the formula would be unjust or inappropriate due to special circumstances in the particular case." (§ 4057, subds. (b)(1), (3), (4), & (5).)

Section 4058 provides the manner by which a trial court is to ascertain a parent's income for purposes of determining the guideline child-support amount. Subdivision (a) provides in pertinent part that the "annual gross income of each parent means income from whatever source derived." The subdivision goes on to list various sources of qualifying income for purposes of calculating guideline

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parties." ' (*Cheriton, supra,* 92 Cal.App.4th at p. 284.)" (*Bodo, supra,* 198 Cal.App.4th at p. 385.)

child support, and provides exceptions thereto. The list is expressly illustrative rather than exhaustive. Thus, " ' "[I]ncome is broadly defined for purposes of child support. [Citations.] Subject to certain statutory exceptions . . . [annual] gross income 'means income from whatever source derived . . . .' [Citation.] Although [section 4058] specifically lists more than a dozen possible income sources, by the statute's express terms, that list is not exhaustive. [Citations.] Rather, the codified income items 'are by way of illustration only. Income from other sources … should properly be factored into the "annual gross income" computation. [Citations.]' " ' [Citation.] ' "The judicially recognized sources of income cover a wide gamut." [Citation.]' [Citation.]" (*Sorge, supra*, 202 Cal.App.4th at p. 642.)

"In determining a parent's income for purposes of calculating guideline child support, a trial court may choose to follow the guidance of subdivision (a) of section 4058, by utilizing the factors identified in subdivision (a)(1) through (3) to determine a parent's actual income, or the court may, in its discretion, impute to that parent an income different from his or her actual income—i.e., an income amount that corresponds with that parent's earning capacity. Thus, a trial court may ultimately calculate the guideline child support amount by using, as the income factor in its support calculation, either (1) the parent's actual income, as calculated under section 4058, subdivision (a)[,] or (2) the parent's imputed income, as authorized by section 4058, subdivision (b), if the court determines that imputing income to the parent would be more appropriate and would better serve the child's best interests." (*Sorge, supra*, 202 Cal.App.4th at pp. 642-643, fn. omitted.)

If the court in its discretion determines to consider the earning capacity of a parent in lieu of actual income, the court may take into account the ability to earn from capital as well as labor. (*Schlafly, supra*, 149 Cal.App.4th at p. 754; *De*

Guigne, supra, 97 Cal.App.4th at p. 1363; see also *Mejia v. Reed* (2003) 31 Cal.4th 657, 671 [court may consider earnings from invested assets in assessing earning capacity].) "Just as a parent cannot shirk his parental obligations by reducing earning capacity through unemployment or underemployment, he cannot shirk the obligation to support his child by *underutilizing* income-producing assets." (*In re Marriage of Dacumos* (1999) 76 Cal.App.4th 150, 155.) In this regard, the "trial court has broad discretionary authority to impute income and need not defer to the parent's choice of investment. (*Destein, supra*, 91 Cal.App.4th at p. 1391.)" (*Schlafly, supra*, 149 Cal.App.4th at p. 755.) A parent may not place a source of possible income " ' " 'off-limits' " ' " through his or her choice of investment. (*Ibid*; *Cheriton, supra*, 92 Cal.App.4th at p. 292.) But when imputing investment income, the court must use a reasonable rate of return; the figures " 'must have some tangible evidentiary foundation.' [Citation.]" (*Schlafly, supra*, 149 Cal.App.4th at p. 756.)

Accordingly, "[w]hen the income of a parent does not adequately reflect that parent's earning capacity and station in life, a trial court has at least two possible avenues for addressing this income-related 'special circumstance.' Under one scenario, the court may determine that parent's actual income derived pursuant to section 4058, subdivision (a), which it would then use to calculate the guideline support amount. If the result of this calculation does not accurately reflect that parent's financial circumstances (and the resulting guideline support amount would therefore be unjust or inappropriate given that parent's actual wealth), the court may deviate from the guideline support amount pursuant to section 4057, which permits a court to deviate from the guideline support amount if the court determines that the formula would be unjust or inappropriate in the

particular case.[5] Alternatively, the court could exercise its discretion under subdivision (d) of section 4058 to use a different income amount, based on imputed income that is consistent with that parent's earning ability." (*Sorge*, *supra*, 202 Cal.App.4th at p. 643, fn. 6.) Despite the presumption in favor of guideline support, the policies expressed in section 4053 make clear that the court's paramount concern in adhering to or departing from the guideline amount must be the interests of the children. (§ 4053, subds. (a)-(l); *De Guigne*, *supra*, 97 Cal.App.4th at pp. 1359-1360.)

C. Father Has Shown No Abuse of Discretion by the Trial Court

Father generally contends that the court abused its discretion in not using what he claimed was his actual income, which he contended was negative, in setting guideline support and instead imputed income from some of his investments or assets based on a 2.75 percent rate of return. He claims the court further abused its discretion in determining his custody timeshare as a component of the guideline formula. And he generally contends that the court abused its discretion by finding the existence of special circumstances that warranted deviation from the guideline. Finally, he contends the court abused its discretion in declining to find changed circumstances that warranted a reduction in child support.[6]

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[5] Deviation from guideline support triggers the court's obligation under section 4056, subdivision (a), to state in writing or on the record (1) the amount of support that would have been ordered under the guideline formula; (2) the reasons the ordered amount of support differs from the guideline formula amount; and (3) the reasons the ordered amount of support is consistent with the best interests of the children. The court complied with this requirement here in its written order.

[6] We say Father "generally" makes these contentions because his brief contains a litany of sometimes one-sentence pitches—like bullet points—alluding to various incidents of claimed error. But these purported arguments are undeveloped and we decline to address every single one of them. It is not our task to develop an appellant's argument, and we may properly treat an undeveloped

Beginning with the first of these contentions, Father in essence claims nothing more than that the court had no authority to impute income from his substantial investments and assets from which he was currently deriving little or no income, or from substantial amounts of cash that he had gifted away in the past year or two, and that the court was instead bound to calculate guideline support using what he claimed to be his actual (negative) income. But as we have already explained in discussing the general legal principles applicable to the determination of an award of child support, it was well within the court's discretion to determine Father's income based on his earning capacity, and to do so by imputing a reasonable rate of return on some of his non-performing or underperforming capital investments and assets as well as substantial amounts of gifted cash. These determinations were supported by Mother's expert's opinion testimony concerning a reasonable rate of return on a balanced portfolio the size of Father's,[7] which testimony the court found more credible than that of Father's expert. In fact, in several areas relevant to these determinations, Mother's expert's testimony was undisputed.

As we have explained, this judicial authority derives from section 4058, subdivision (b) and is properly exercised where, as here, the court finds it more appropriate than using actual income, consistent with the best interests of the children. (*Sorge, supra*, 202 Cal.App.4th at pp. 642-643.) It is well established

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argument as abandoned. (*Dills v. Redwood Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn.1.) He does include one claim of error about the court's finding that Mother had reserved the right to later seek retroactive child support. But Mother has not done so as far as this record shows and Father is not here aggrieved on the issue.

[7] Mother's expert actually testified that a reasonable rate of return on a balanced investment portfolio the size of Father's would be in the range of 6.95 percent, but the court, in its discretion, reduced that to 2.75 percent in determining income for purposes of calculating guideline support.

that the court may derive income from earning capacity and may do so using capital instead of labor by imputing a reasonable rate of return on underutilized or underperforming investment assets, based on the evidence and in the best interests of the children. (*Schlafly, supra*, 149 Cal.App.4th at pp. 754-756; *De Guigne, supra*, 97 Cal.App.4th at p. 1363; *In re Marriage of Dacumos, supra,* 76 Cal.App.4th at p. 155; *Cheriton, supra,* 92 Cal.App.4th at p. 292; *Williams, supra*, 150 Cal.App.4th at pp. 1236-1241; *Sorge, supra*, 202 Cal.App.4th at pp. 643-648.) The court did nothing more than that here, and did so reasonably. The court may also impute income based on a parent's voluntary choices to divest himself of assets—here in the form of substantial charitable and family giving at the expense of his two minor children so as to effectively preclude them from sharing in his level of wealth and standard of living. (*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1074, 1081-1083 [court may impute income for parent's voluntarily deferred salary as this was effectively a choice to invest in his company at the expense of his minor children while living off other assets].)

Accordingly, the court had the authority to exercise its discretion to derive income based on earning capacity for purposes of calculating guideline support, and its legal conclusions are supported by factual findings that are, in turn, supported by substantial evidence. Father's litany of undeveloped attacks on the court's factual findings in this regard display a lack of understanding of not just the operative legal principles at issue in this matter but also the substantial evidence rule. They accordingly fail to demonstrate any error or abuse of discretion. The same is true of Father's evidence-based contention that the court understated Mother's income, or earning capacity. The court's findings in this regard are also supported by substantial evidence. In fact, it was undisputed that although Mother worked somewhat less than 40 hours per week as a nurse, that

was considered full time in her particular job, and she occasionally picked up extra hours.

With respect to the court's calculation of Father's custody timeshare, he contends that the court erred by accepting Mother's offer of proof on the topic. Her calendars for the last few years were also offered in evidence. These calendars noted the children's time with each parent in the preceding years, and disputed Father's claim that he spent some 46 percent of time with the children. Father makes this contention about the offer of proof as if the court had no power to take evidence on this basis, offering no applicable authority to this effect, and as if he made a timely objection to this procedure. He did not. He did specifically object to the introduction of Mother's calendars through the offer of proof in trial on the asserted basis that the calendars had not been produced pre-trial, but the objection was overruled and Father fails to articulate or show a prejudicial abuse of discretion in that evidentiary ruling. Moreover, Father's counsel was also provided the opportunity to cross examine Mother on the custody-time-share issue—and her calendars—six weeks later at the continued hearing, eliminating any prejudicial effect of the element of surprise of which Father complains. In addition, the two earliest years of Mother's calendars had been previously produced and considered at an earlier hearing related to one of Father's prior requests to reduce child support, further mitigating any claimed element of surprise or "trial by ambush" as counsel so colorfully and hyperbolically put it.[8]

In sum, Father has failed to show an abuse of discretion by the trial court in its determination to derive his income based on his earning capacity. The court

[8] The reporter's transcript is replete with sometimes rude and otherwise inappropriate comments by Father's counsel, which were directed throughout the oral proceedings to opposing counsel, witnesses, and even the court. There is no place for such comments in the course of legal proceedings.

alternatively concluded that special circumstances existed to warrant deviation from the guideline. Because the court determined the same child support amount when it considered the special circumstances in this case, it is not necessary to address this latter claim of error. We nevertheless briefly address the merits of Father's claim in this regard.

The court's order referenced, among other things, Father's testimony concerning his 2009 substantial investments in non-income producing assets (approximately $1,450,000) and his substantial charitable and family giving in 2009 and 2010 (approximately $1,625,000), as well as his spending of substantial time in entrepreneurial activities for no compensation. The court also cited that Father lives alone, except when the children are with him, in a "5-bedroom, 6.5 bath, 6,000 square foot home (with a swimming pool, vineyard and three-car garage) on 12 acres in Saratoga." The court further cited that Father owns another 30-acre parcel adjacent to his home, which he was improving with a road in order to sell it at a profit. Father also had two cars. His own valuation of his assets, which the court found was low and had omitted assets, indicated a net worth of $6,488,000 while Mother rented a home and had a net worth a fraction of the size.[9]

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[9] In his challenge to the court's determination of special circumstances, Father attacks aspects of the court's order that relate to other topics or determinations, including that changes "in Father's financial circumstances are largely due to his volitional acts," which the court referenced in connection with its decision to impute income to Father. He also complains that the court did not reference Father's cancer diagnosis or medical expenses—"which he did not choose to have"—in its findings of special circumstances under section 4057, subdivision (b)(5). We decline to address such complaints because these issues were outside of the court's specific special-circumstances findings or determination, and the court was not bound to include these issues among those findings based on the applicable legal principles we have outlined. In other words, because of Father's substantial wealth and holdings and his financial choices, the omission of these other factual issues from the court's special-circumstances findings did not render those findings, or the legal determination, infirm. The

In finding special circumstances based on these facts, which are amply supported by the record, the court appropriately cited *De Guigne, Cheriton, Schlafly, and Williams*.

As noted, section 4057, subdivision (b)(5) allows a finding of special circumstances warranting deviation from guideline support where "[a]pplication of the formula would be unjust or inappropriate" in the particular case. While the court reached the same determination as to the amount of child support based on both the guideline and special circumstances, we read the court's determination of special circumstances as an implied finding that guideline support based on Father's claim of *actual* income would have been unjust or inappropriate. In contending that the court abused its discretion by its finding of special circumstances under section 4057, subdivision (b)(5), Father simply denies that any such circumstances are present, in essence contending that his wealth and holdings, particularly in relation to Mother's savings, is irrelevant and that it is Mother who lives an extravagant lifestyle and is an "extravagant spender" because of her trips to Lake Tahoe and Hawaii, "monthly spending for grooming, gifts and vacations," and spending on attorneys "to sue [Father]." Such claims, lacking appropriate legal analysis, hardly mount a sustainable showing of abuse of discretion. Nor are they adequate to overcome substantial evidence in the record that supports the court's determination. We readily conclude that the court properly engaged in the exercise of its discretion within the boundaries of the law that defined that discretion, and that its legal determinations with respect to special circumstances are well supported by substantial evidence in the record.[10] Indeed,

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issues are thus not outcome determinative on the specific question for purposes of this appeal.

[10] It is clear from the record that the court was pressed to manage this proceeding within available time parameters and that particularly by the third hearing, which all but Father's counsel believed was limited to certain issues, the

the court's comprehensive and accurate 23-page order reflects its careful and thorough exercise of discretion with respect to all issues before it, as well as deep familiarity and facility with the applicable law as applied to the complex factual record presented here.

Finally with respect to child support, Father contends that the court abused its discretion by not finding that his cancer diagnosis and resulting ongoing medical expenses constituted a changed circumstance mandating a reduction. The court's order ultimately denied Father's request but acknowledged his medical condition, noting that at the time of the hearing, he had "courageously fought the cancer that was diagnosed in 2009" and was "optimistic regarding his recovery." The court also attributed Father's generous charitable and family giving in 2009 and 2010 to the shock of his cancer diagnosis, and further noted that such giving, "in spite of the looming medical costs," "would likely exceed the amount of child support, at the current obligation level" for both children through their respective emancipations. The order further acknowledged that although Father had sought a child-support reduction based on his cancer and medical bills constituting a changed circumstance, "inadequate documentation was provided." Relating to this determination was the court's observation that in spite of his ongoing medical

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court was imposing time limits in order to conclude that day. Father contends that in doing so, the court erroneously precluded his ability to elicit testimony from Mother on the issue of special circumstances, and that the court misled Father's counsel by indicating that it was not intending to deviate from guideline support in its ruling. It is true that the court may have implied that it was not considering the alternative finding of special circumstances to warrant deviation from the guideline when it said, "There is no 'outside of guideline support.' The court has to follow the statute." This was said in response to counsel's efforts to continue, over objection, his cross-examination of Mother regarding how she spent child support she had received in the past. But given the tangential relevance of this area of inquiry to the court's ultimate determinations concerning the existence of special circumstances, and the latitude given in relevant areas, we find the court's indication to have been non-prejudicial.

bills, Father's July 2010 Income and Expense Declaration did not reflect a change in investments or expenses. But most critically, the court recognized that Mother's expert accounted for Father's claimed ongoing medical expenses of $7,000 per month in his opinions and analysis concerning Father's income and earning capacity, illustrating that even in spite of the changed circumstances presented by Father's diagnosis and resulting medical expenses, these facts, in the context of Father's entire financial picture, did not warrant a child-support reduction. We further observe that while the court found Mother's expert to be credible in his opinions, its order reduced the proffered rate of return on investment by over half in its final analysis.

Father has simply failed to show that the court abused its discretion in its denial of his request to reduce child support based on his cancer diagnosis or ongoing medical expenses, or that there was any prejudicial effect to him of the court's ruling in this regard.

II. The Court's Order Concerning Attorney Fees

A. Standard of Review

The court awarded $45,000 in attorney fees against Father. It expressly did so as a sanction under section 271 and based on need and ability to pay under section 3652. Section 3652 provides, "Except as against a governmental agency, an order modifying, terminating, or setting aside a [child] support order may include an award of attorney's fees and court costs to the prevailing party." To the extent the award is based on section 3652, Father challenges this statutory basis as authority for it because his motion to modify child support was denied (as opposed to modified, terminated, or set aside) and he further contests that Mother was a prevailing party. Because we affirm the award under section 271, we need not dispose of Father's alternative challenge under section 3652.

As to section 271, we review an award of fees and costs under this section for abuse of discretion. " '[W]e will overturn such an order if, considering all the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order. [Citations.]' [Citation.] We review any factual findings made in connection with the award under the substantial evidence standard. [Citation.]" (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 291.) In reviewing the sanctions order, we indulge all reasonable inferences to uphold it. 'We will not interfere with the order for sanctions unless the trial court abused its broad discretion in making it.' [Citation.]" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 828.)

B. The Court Did Not Abuse Its Discretion Under Section 271 [11]

Section 271, subdivision (a) provides: "Notwithstanding any other provision of this code, the court may base an award of attorney fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into

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[11] Father preliminarily contends in a single paragraph that because Mother's responsive declaration to the order to show cause did not request attorney fees, she effectively failed to request fees and the court's award accordingly violated his right to due process. But Father ignores Mother's counsel's multiple and regularly supplemented declarations in support of her request for attorney fees, coupled with points and authorities. On this record, it cannot be said that Father or his counsel were unaware of Mother's request for fees or that Father was deprived of notice or due process in any manner with respect to fees.

consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award." (§ 271, subd. (a).) " '[S]ection 271 sanctions have been upheld for "obstreperous conduct which frustrated the policy of the law in favor of settlement, and caused the costs of litigation to greatly increase . . . ." [Citation.]' " (*In re Marriage of Lucio* (2008) 161 Cal.App.4th 1068, 1082.)

The court's order concerning attorney fees specifically found that considerable time was spent with respect to a request by Father for a protective order, and the court ultimately adopted the order proposed by Mother counsel; financial information provided by Father to his counsel was inaccurate and incomplete, necessitating additional time and expense; Father's expert relied on Father's erroneously supplied information, which resulted in opinions significantly understating the value of Father's investments and omitting some of his assets; Father maintained his unmeritorious legal position that his substantial gifting should have no effect on his obligation to pay child support (a position he further maintains on appeal), ignoring statutes and existing case law; Father maintained the unmeritorious positions that the child support he pays enriches Mother and that he is entitled to know how that child support is spent; Father required the unnecessary expenditure of time litigating the issue of Social Security benefits payable to the children; Mother needs the fee award as she cannot afford the level of litigation required to contest Father's motion, his second unsuccessful attempt

to reduce child support in two years; and imposing the award will not impose an unreasonable burden on Father.[12]

Father challenges the fee award on the basis that the order does not make findings about settlement offers, and that the only offers made were by him. Even if we were to accept these statements as true, they do nothing to demonstrate an abuse of discretion in the court's award. As documented by the record Father's—and seemingly his counsel's—obstreperous conduct throughout the proceeding frustrated actual resolution, increased costs, and more than justified the award regardless of specific settlement offers. Father further contends that the proceedings were delayed by Mother and that she "alone complicated a simple case." These contentions are pointedly belied by the record and again display a misunderstanding of the applicable abuse of discretion standard of review and the substantial evidence rule.

In sum, Father has failed to show an abuse of discretion in the court's fee award.

III. Other Issues

A. *The Adequacy of the Statement of Decision*

Father contends that the court's final statement of decision and order failed to address three primary issues raised by his objections to what we view as the court's preliminary and tentative decision, though not technically titled as such. These issues are: 1) whether there was a change in circumstances to warrant a

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[12] The court also expressly premised its attorney fee award on Mother's counsel's Fourth Supplemental Declaration in support of her request for fees filed December 20, 2010, and Father's reply declaration filed January 3, 2011. These documents outline Father's and his counsel's contentious and obstreperous litigation conduct in excruciating detail, all of which constitutes substantial evidence in support of the fee award here.

reduction in child support; 2) "guideline support" and "guideline support based on actual income"; and 3) "specific issues" relating to the award of attorney fees, stated as "policy to promote settlement" and "delays caused by [Mother]."

Code of Civil Procedure section 632 provides that upon proper and timely request by a party, the "court shall issue a [written] statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial." The statute also expressly provides that "written findings of fact and conclusions of law shall not be required." Code of Civil Procedure section 634 further provides that when "a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . , it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue."[13] Rule 3.1590 contains

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[13] This provision is related to the doctrine of implied findings, under which the appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record. In other words, the necessary findings of "ultimate facts" will be implied and the only issue on appeal is whether the "implied" findings are supported by "substantial evidence." (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793, superseded by statute on another ground as stated in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267; *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 647.) The doctrine is a "natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error." (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.) But under Code of Civil Procedure Section 634, we will not apply the doctrine of implied findings where a party has properly raised objection to a statement of decision to which the court did not respond.

provisions regulating the timing and sequence of procedures relating to the statement of decision and ensuing entry of judgment.[14]

A statement of decision need not discuss each point listed in a request for statement of decision. It need only set forth ultimate facts as opposed to evidentiary facts on the principal controverted issues requested. Thus, if the appealed judgment is otherwise supported by the findings made, the trial court's failure to make findings on other issues is not reversible error. (*In re Marriage of Garrity & Bishton* (1986) 181 Cal.App.3d 675, 687; *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 736, fn. 15 [statement of decision sufficient if it fairly discloses judge's determination of ultimate facts and material issues; trial court not required to respond point by point to issues posed]; *Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.)

As to Father's first claimed unresolved issue, we observe that the court's order specifically ruled on his request to modify (reduce) child support based on changed circumstances, denying it. As to the second issue, it is difficult to ascertain in what way the court's statement of decision and order failed to address guideline support, and given Father's failure to specify insufficiencies other than by general reference to a document in the record, we need not entertain a guess. And as to the third issue, given the result, it is also difficult to ascertain how the court failed to address the issue of attorney fees, even considering the two factors Father references.

Based on our thorough review of the court's comprehensive final statement of decision and order, we conclude that "[t]he trial court's statement of decision addressed the substance of all of the matters raised by [Father's] request for

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[14] We note that these technical procedures dictated by Rule 3.1590 were not precisely followed here by the court or the parties. But we find no prejudice shown by the deviation.

specific findings." (*Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118.) We note again that "[a] trial court is not required to make an express finding on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case." (*Ibid*.) Indeed, "the law is well settled that if findings are made on issues that determine the case, other issues become immaterial and a failure to make additional findings does not constitute prejudicial error [citations.]" (*Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 278.) In addition, "a specific finding is not required on an issue where it follows by necessary implication from a general finding [citation.]" (*Bley v. Ad-Art, Inc.* (1967) 250 Cal.App.2d 700, 712.) Here, the trial court's final statement of decision and order sufficiently addressed all the basic issues in the case. Accordingly, we find no reversible error.

B. *Discovery Issues*

Father generally contends that the court allowed evidence at trial that had not been produced in discovery and that the court compounded the error by failing to rule on unspecified in limine motions or to issue unspecified evidentiary sanctions. He does so without articulating or discussing what specific information was admitted over what specific objection or based on what prior specific discovery requests, or specifically how he was prejudiced.

We need not develop an appellant's arguments for him. An appellant's obligation includes the burden of specifying the issues and presenting argument and legal authority on each point raised. He must do more than barely assert a claim of error and leave it to the court to figure out the error and its prejudicial effect. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793.) Given the undeveloped state of this contention, we consider it waived and decline to address it.

DISPOSITION

The court's June 27, 2011 order re child support modification is affirmed.

Márquez, J.

WE CONCUR:

Premo, Acting P.J.

Mihara, J.